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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CLAUDINE TINSMAN,

Plaintiff and Appellant,

v.

AINSLEY CARRY et al.,

Defendants and Respondents.

B283418

(Los Angeles County  
Super. Ct. No. BS160597)

APPEAL from an order of the Superior Court of  
Los Angeles County, David Sotelo, Judge. Affirmed.

Hathaway Parker, Mark M. Hathaway, Jenna E. Parker;  
Werksman Jackson Hathaway & Quinn, Mark M. Hathaway and  
Jenna E. Eyrich for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, Cassidy C. Davenport;  
Law Office of Denise Ann Nardi and Denise A. Nardi for  
Defendants and Respondents Ainsley Carry, Ed.D, Donna  
Budar-Turner and University of Southern California.

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Plaintiff and appellant Claudine Tinsman (Tinsman) appeals from an order discharging a writ of administrative mandamus naming as respondents the University of Southern California and its employees Ainsley Carry and Donna Budar-Turner (collectively referred to as “USC”). The trial court had previously granted Tinsman’s petition for a writ of administrative mandamus challenging USC’s decision to expel Tinsman from USC Law School based on academic misconduct. The court directed USC to reconsider its disciplinary decision in light of new evidence presented by Tinsman that she was suffering from a mental illness at the time of her misconduct. After reconsideration, USC reached the same decision—that Tinsman should be expelled—and the trial court found USC had complied with its order to consider the new evidence. Tinsman now contends the trial court erroneously found that USC had complied with its order. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Tinsman’s Misconduct<sup>1</sup>*

As of May 2014, Tinsman had just completed her first year of law school at USC Gould Law School. In the last two weeks of that month, she participated in the 2014 law journal write-on competition for students seeking membership on one of the law

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<sup>1</sup> The following facts are taken from the “Summary Administrative Review” conducted by USC’s Office of Student Judicial Affairs and Community Standards (SJACS), as well as from the documents considered by SJACS that are part of the Administrative Record. Tinsman does not contest any of the factual findings by SJACS or the underlying facts in the Administrative Record.

school's three law journals. During this 15-day competition, each student was required to prepare a legal memorandum using selected case materials, and to complete a "Bluebooking" exercise that would test his or her skills in citing legal materials. The Bluebooking exercise that Tinsman submitted was virtually identical to the one submitted by another law student participating in the competition, Irina Kirnosova.

Tinsman had invited Kirnosova to stay at her apartment for a few days at the end of the write-on competition. Kirnosova accepted her invitation because Tinsman's apartment was closer to Kirnosova's workplace, and with a shortened commute, she could devote more time to work on her write-on assignment.

The USC Student Conduct Code prohibits unauthorized collaboration on student work. Law students had also been informed on at least two occasions that they were not permitted to give or receive assistance during the write-on competition. After turning in their submissions, Tinsman and Kirnosova both certified in writing that they had complied with academic integrity standards.

On July 6, 2014, Robert Saltzman, an associate dean at the law school, notified Tinsman via email that she was alleged to have collaborated inappropriately on the write-on competition. Saltzman sent the same notification to Kirnosova.

Tinsman responded the following day, writing that she was "shocked and offended" to learn she had been accused of inappropriate collaboration. Tinsman denied any such collaboration and stated she was anxious to have the situation resolved.

Kirnosova also responded by email, denying any collaboration during the write-on competition. However, on

July 13, 2014, Saltzman received another email from Kirnosova's email account, apologizing for her "prior misrepresentations" about the write-on process, retracting her earlier denials, and stating that she had surreptitiously acquired Tinsman's password, logged in to Tinsman's computer while Tinsman was at work, and copied her Bluebooking exercise. The email explained that Kirnosova had been under extreme stress, including because she had family in the Ukraine who were at risk from the ongoing conflict there. The email stated Kirnosova was coming forward with the truth because she was "unwilling to run the risk of ruining another student's academic and professional future for the sake of sparing myself from academic discipline."

On July 16, 2014, Saltzman replied to the purported confession email from Kirnosova, and he recommended disciplinary action based on her plagiarism. However, when Kirnosova received Saltzman's email, she responded that she had not authored the email admitting to appropriating Tinsman's work, and she now believed Tinsman had gained access to her email account and forged the confession email to Saltzman without Kirnosova's knowledge.

Kirnosova's email explained that she had discovered that on July 13, 2014, someone had logged into her email account from an unknown computer. Someone had also been trying to access her law portal account on July 9, 2014; that day she received three emails from the portal's webmaster directing her to call if she was having trouble accessing the portal. She stated that later on July 9, Tinsman asked her if she had received any strange emails about her law portal account. Kirnosova also wrote that Tinsman was the only person at the law school whom she told about her family's situation in the Ukraine.

Kirnosova also stated that Tinsman had asked to borrow her computer on the morning the write-on competition submissions were due; Tinsman's stated reason was that the file on her own laptop was corrupt and she needed to get her documents from her email account. Although Tinsman had been on Kirnosova's computer for only a few minutes with Kirnosova a few feet away, Kirnosova now suspected Tinsman was copying her work at that time.

Kirnosova also recounted that, on July 11, Tinsman asked her if she wanted to retrieve a few things Kirnosova had left at Tinsman's apartment. When they got to the apartment, Tinsman said her laptop was still broken and she had received an email from the financial aid office that day stating she needed to provide information by 5:00 p.m. Tinsman attempted to convince Kirnosova that she needed to send an email to the financial aid office from Kirnosova's account, but Kirnosova told her she was not comfortable allowing that.

On July 19, 2014, Saltzman emailed Tinsman advising her that Kirnosova had made allegations about her conduct during and after the write-on competition. He advised her that given their serious nature, he would have to refer the allegations to the University Conduct Office for adjudication, and he would have to recommend sanctions that would include expulsion if she were found to have submitted the fraudulent email confession. Saltzman advised Tinsman that if she provided a full and accurate statement and admitted wrongdoing, Saltzman would do his best to work out a solution that was more lenient. That same date, Tinsman responded that she was "extremely angered to learn that Ms. Kirnosova has made such serious allegations" against her. She then provided detailed responses to each of the

allegations, continuing to deny any misconduct and providing alternative explanations. She wrote, “I do not quite understand why Ms. Kirnosova would make such allegations after confessing to wrongdoing, but I can only surmise that she regrets doing so and is now trying to create doubt regarding the circumstances of her confession.”

## *2. USC’s Disciplinary Process and Findings*

### *a. Summary Administrative Review*

On August 22, 2014, USC advised Tinsman that an academic integrity complaint initiated by Saltzman accused her of violating multiple sections of the University of Southern California’s Student Conduct Code concerning academic dishonesty and misuse of USC’s computer systems.<sup>2</sup> Donna Budar-Turner, a SJACS review officer, conducted a Summary Administrative Review of the allegations against Tinsman. As part of the process, Turner interviewed Tinsman, Kirnosova, and the law school’s assistant director of Web Services Christopher Kowalski, and she reviewed voluminous documents provided by Tinsman, Kirnosova, Saltzman, and Kowalski. Turner prepared a 13-page decision that summarized the charges, the evidence considered, and the findings and sanctions.

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<sup>2</sup> Tinsman was alleged to have violated 11 different Student Conduct Code sections, including 11.11.A (submitting material authored by another person but represented as the student’s own work); 11.15.A (attempting to benefit from the work of another student); 11.15.B (acting in a way that jeopardizes another student’s academic standing); 11.17 (falsifying documents); 11.19.A (using university computer network to gain access, alter and/or use unauthorized information); and 11.21 (committing an act which is intended to gain an unfair academic advantage).

The review officer summarized her detailed investigation to determine which of the two students—Tinsman or Kirnosova—had copied and submitted the other’s work. In particular, she focused on the same unique parenthetical submitted by each student in response to Bluebooking exercise number 15. Each student’s parenthetical stated: “The Bluebook: A Uniform System of Citation R. 18.2, at 165-70 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010) (making it hell on Earth to figure out how to cite to an annual report that is only available online, to resist throwing *The Bluebook* at the nearest passer-by, and to keep from calling up Columbia Law Review Association to demand ‘Dunkin’ Donuts’ for my pain and suffering).” The review officer noted each student’s explanations of the origin of the parenthetical, and found that Tinsman made inconsistent statements that were not credible.

One of Tinsman’s explanations for her purported reference to Dunkin’ Donuts in the parenthetical was that she had been eating Dunkin’ Donuts while she worked on her write-on assignment. “When SJACS asked how she was able to acquire Dunkin’ Donuts during the very busy Write-On competition, given the fact that there were no Dunkin’ Donut franchises anywhere in Los Angeles County during the time period in question, Ms. Tinsman reported that a friend ‘brings’ Dunkin’ Donuts to her. When asked to elaborate on her response, Ms. Tinsman reported that ‘an old friend from undergrad’ gave them to her. When asked for the name of that friend, Ms. Tinsman replied, ‘Richard Chavales.’ Ms. Tinsman later reported that Mr. Chavales *mailed* the donuts to her. . . . [¶] Although Ms. Tinsman had her cell phone and computer in her possession during her meeting with SJACS, when asked to

provide contact information for Mr. Chavales so SJACS could verify Ms. Tinsman's report, Ms. Tinsman declined to do so, stating she does not have contact information for her longtime friend, Richard Chavales. Ms. Tinsman was asked to have Mr. Chavales contact SJACS as soon as possible. [¶] An internet search on October 17, 2014 for 'Richard Chavales' returned 'no results.'"

"Nearly two weeks later, on October 30, 2014, SJACS received email correspondence from rchavales@gmail.com. The correspondence purports to be from 'Richard Chavales' and attempts to corroborate Ms. Tinsman's report to SJACS. The email claims that Mr. Chavales purchased Dunkin' Donuts from outside of Los Angeles County a day before he was scheduled to travel to Los Angeles to visit Ms. Tinsman. The email explains that the evening before he was to leave for Los Angeles, Mr. Chavales suddenly had to cancel his visit. The message states that after calling Ms. Tinsman after 5:00 p.m. to cancel the visit, Mr. Chavales decided to mail the donuts to her 'since [he] had already bought the donuts.' . . . [¶] SJACS has not been able to determine the truth, veracity or authenticity of the correspondence or the true identity of the author despite repeated requests for contact information and a copy of a government issued photo ID from the sender. The email was therefore not deemed credible or reliable."

The review officer concluded that "[t]he preponderance of the credible and reliable evidence in this case supports a finding that Kirnosova is the author of the answer to #15 of the Bluebooking exercises that was submitted by both students. The evidence also supports a finding that Ms. Tinsman took Ms. Kirnosova's work in verbatim or near verbatim . . . without



Ms. Kirnosova's knowledge or consent, and submitted the material as her own without citation or attribution of the source of the material."

The review officer found that "[e]ven more troubling than the plagiarism, is the false confession that was sent in Ms. Kirnosova's name, from her law school email account to Dean Saltzman." The officer recounted the substantial amount of evidence leading to the conclusion that Ms. Kirnosova did not write or send the July 13, 2014 email confession received by Saltzman, and that Tinsman was the one who had fraudulently done so. "[W]hen faced with allegations of plagiarism or collaboration, Ms. Tinsman gained unauthorized access to Ms. Kirnosova's law school email account and sent Dean Saltzman the fraudulent email in Ms. Kirnosova's name in an attempt to clear Ms. Tinsman from any suspicion and place full blame on Ms. Kirnosova for Ms. Tinsman's wrongdoing."

The review officer concluded that expulsion was the appropriate sanction for Tinsman's violation of all the charged sections of the Student Conduct Code, as well as "every principle of integrity and ethical behavior embraced by the university community." The officer concluded that "[t]he lengths to which Ms. Tinsman was willing to go to clear herself from responsibility for her initial breach of academic standards demonstrate an alarming lack of integrity. . . . [¶] The sanctions assigned to Ms. Tinsman are intended to protect the academic integrity of the University and to send a clear message to Ms. Tinsman that such violations of integrity will not be tolerated at USC."

*b. Tinsman's appeal to Student Behavior Appeals  
Panel based on new evidence of mental illness*

On February 11, 2015, Tinsman appealed the review officer's decision to the Student Behavior Appeals Panel ("Panel"). She stated she did not dispute any of the review officer's factual findings, and apologized for her actions, but she asserted that new evidence had become available which was sufficient to alter the decision and which rendered the sanction of expulsion excessive. Specifically, she contended that she had recently been diagnosed with bipolar mood disorder with psychotic features. She argued that she was not "of sound mind" or "in control of her actions" at the time of the plagiarism or the ensuing cover-up, and "was driven to taking those actions by delusions and hallucinations." She therefore requested that the Panel reconsider the punishment of expulsion.

Tinsman submitted a letter (characterized as a "personal statement" by her counsel on appeal) in which she described her symptoms of psychosis beginning in mid-March of 2014 and lasting until January 2, 2015. She states that she "felt a distinct sense of paranoia towards Ms. Kirnosova during the course of the Journal Write-On Competition" and "was convinced that she had stolen my work for the competition. . . . Following the theft of her write-on materials, I realized that I had committed a grave error. But the voices told me it was too late, that I was worthless, and the only way to avoid imprisonment was to continue the cover-up." She attempted suicide on January 2, 2015 but changed her mind prior to completing the act and was admitted for a psychiatric evaluation that day, at which time she was prescribed antipsychotic medication.

Tinsman's letter states she was then referred to Dr. Kristin Cadenhead at the University of California, San Diego Medical Center for a psychiatric evaluation and treatment. According to Tinsman, Dr. Cadenhead diagnosed her with bipolar disorder with psychotic features. In addition, a magnetic resonance imaging scan ("MRI") of her brain revealed a cyst pressing on her brain. Tinsman states that "[t]here is a possibility that the cyst is the cause of my psychosis," as "[s]everal articles have reported patients with intracranial arachnoid cysts displaying psychiatric illness as their main symptom." Tinsman indicated she was successfully treating her mood disorder with medication and psychotherapy.

Tinsman also submitted a letter from Dr. Cadenhead, in which the psychiatrist opined that Tinsman "has suffered for significant untreated mental health issues over the last year that interfered with her insight and judgment." Dr. Cadenhead stated that as she reviewed Tinsman's "thought content" that Tinsman described having during the period of time that she engaged in the misconduct, "it is quite apparent that she was in a psychotic state with evidence of prominent delusions, hallucinations and disorganized thinking and behavior." Dr. Cadenhead opined that "Tinsman's diagnosis is most consistent with a Bipolar Mood Disorder with Psychotic Features versus Schizoaffective Disorder Bipolar Type," and offered her opinion that Tinsman's "erratic and bizarre behavior over the last few years was secondary to an emerging mental disorder and very uncharacteristic of the person she is."

Tinsman also submitted some general background materials from the National Institute of Mental Health, the Mayo Clinic, and psychcentral.com, describing bipolar disorder and its

causes and symptoms, and an article from the Centre for Addiction and Mental Health describing the common symptoms of psychosis. The article from the National Institute of Mental Health defines bipolar disorder as “a brain disorder that causes unusual shifts in mood, energy, activity levels, and the ability to carry out day-to-day tasks.” The article also describes the symptoms of a bipolar person in a “manic episode” versus in a “depressive episode.” Symptoms of mania include mood changes such as feeling “high” or having an overly happy or outgoing mood. Behavioral changes during a manic state could include: talking very fast; jumping from one idea to another; having racing thoughts; being easily distracted or restless; increasing activities; sleeping little; having an unrealistic belief in one’s abilities; and behaving impulsively and engaging in pleasurable, risk-taking behaviors. Mood changes in a depressive episode could consist of an overly long period of feeling sad or hopeless and a loss of interest in activities once enjoyed. Behavioral changes during a depressive episode could include: feeling tired or “slowed down;” having problems concentrating, remembering, or making decisions; being restless or irritable; changing eating, sleeping or other habits; thinking of death or suicide; and attempting suicide. The article provides that “[s]ometimes, a person with severe episodes of mania or depression has psychotic symptoms too, such as hallucinations or delusions.” For example, during a severe manic episode “you may believe you are a famous person, have a lot of money, or have special powers.” During a severe depressive episode, “you may believe you are ruined or penniless, or you have committed a crime.” The article on psychosis describes the common symptoms of psychosis as including: changes in thinking patterns, such as difficulty

concentrating, memory loss, and disconnected thoughts; delusions; hallucinations; changes in mood; very disorganized behavior; and thoughts of death or suicide.

Tinsman also submitted her MRI results, revealing a “cranial fossa arachnoid cyst, with mild mass effect on the left temporal lobe.” Complementing the MRI results was a 2014 article in the series *Case Reports in Medicine* entitled “Acute Onset of Psychosis in a Patient with a Left Temporal Lobe Arachnoid Cyst,” discussing a patient with rapid onset psychotic disorder who was discovered to have an arachnoid cyst. The article recounted that “[a] review of the literature revealed numerous cases in which patients with psychiatric symptoms are discovered to have an arachnoid cyst.” Specifically, auditory hallucinations, delusions of persecution, and aggressive and violent behavior have been “documented in association with arachnoid cysts.”

*c. Panel’s findings affirming sanction of expulsion*

The three-member Panel issued a one-page written decision disposing of Tinsman’s appeal. The Panel noted that “[w]ith respect to the claim that new evidence was available, Ms. Tinsman provided documentation that she suffers from bi-polar disorder and psychosis, stating that these illnesses are the cause of her plagiarism and her efforts to cover up the incident. Her diagnosis was made after the incidents occurred. Ms. Tinsman asked that consideration be given in light of her newly diagnosed illness. [¶] The [Panel] is tasked with determining whether this new evidence exculpates Ms. Tinsman, that is, whether the new evidence demonstrates she is not guilty of wrongdoing. While her medical condition is newly diagnosed and provides the panel with

new information about Ms. Tinsman, the panel does not find that this evidence proves that she did not commit the act of plagiarism or the act of email fraud. Regardless of the cause of Ms. Tinsman's conduct, her actions still violated the Student Conduct Code." The Panel thus upheld the Summary Administrative Review in its entirety, and found the sanction of expulsion was appropriate for Tinsman's academic integrity violation.

### *3. Tinsman Files Petition for Writ of Administrative Mandamus*

On February 10, 2016, Tinsman filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5, or alternatively under section 1085 ("petition"), challenging USC's decision on both procedural and substantive grounds and requesting the court direct USC to set aside its findings and sanctions. Tinsman requested a stay of the imposition of the sanction of expulsion so that she could enroll in classes again, which request the court denied.

### *4. Trial Court Grants Writ and Directs Panel to Reconsider New Evidence of Mental Illness*

Following briefing by the parties and a hearing, on January 19, 2017, the trial court issued its written decision. The court summarized Tinsman's appeal as follows: "One of the grounds for the appeal was that her recently diagnosed medical condition (arguably a legally cognizable disability) constituted new evidence that had just become available; this new evidence was relevant because it showed that a few months before the write-on competition, [Tinsman] began suffering from a mental

illness and this evidence was sufficient, reasonably, to alter the Administrative Reviewer[']s decision. [¶] [Tinsman] appealed that in light of this new evidence, the sanction was excessive or inappropriate.”

The court first took issue with the way the Panel had framed the question it was required to consider in hearing Tinsman’s appeal. The Panel stated it was “tasked with determining whether this new evidence exculpates Ms. Tinsman, that is, whether the new evidence demonstrates she is not guilty of wrongdoing.” The court found that in fact Tinsman had not asked the Panel to find she was “not guilty” of the misconduct; rather, she asked the Panel to consider whether the new evidence was sufficient to warrant imposing a sanction less severe than expulsion. The court expressed concern that “the Panel appears to not have considered the possibility that the presence of mental illness contributed to, or caused [Tinsman’s] misconduct,” or to have “reasonably consider[ed] this possible ‘causal’ (or ‘intention-related’) evidence not for exoneration or innocence, but to render a fair but appropriate sanction.”

The court found that the Panel had “the obligation to consider reliable evidence that sheds light on whether the actor could or could not entirely control her conduct,” and to make clear that it had considered this new evidence. However, “the Panel’s decision failed to explain why it ignored the evidence of [Tinsman’s] mental condition or why the new evidence was insufficient; it did not explain why the evidence of [Tinsman’s] mental condition was not persuasive or credible, why it was not exonerating or mitigating, and/or why other factors outweighed [Tinsman’s] mental condition. [¶] For example, although [USC’s] brief mentions [USC’s] ethical obligations to academic integrity,

this factor was apparently not weighed in the Panel’s decision-making process.”

The court found that the Panel’s decision fell short of the standard set forth in *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515, requiring that an agency “set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” The court granted the petition and remanded the matter for the Panel to reconsider its decision “consistent with this order.”<sup>3</sup>

#### *5. Reconsideration by the Panel*

On March 22, 2017, a different three-member Panel convened to reconsider Tinsman’s appeal. The Panel’s written decision was provided to Tinsman on April 1, 2017.

The Panel’s decision commences with its explanation that USC “exercises certain disciplinary and discretionary powers” to achieve its objective of maintaining an optimal learning environment. Further, USC “protects its educational environment by establishing and maintaining standards of conduct for its students.”

After setting forth the procedural history of Tinsman’s case, the Panel articulated its understanding that the court had remanded the case so that the Panel could reconsider its decision consistent with the court’s order, and, in particular, so it could “clearly articulate its review and consideration of the evidence Ms. Tinsman submitted in her appeal, as well as its rationale for its conclusions.”

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<sup>3</sup> USC did not appeal the order issuing the writ.



The Panel summarized the events in question, and then discussed the “issues raised on appeal.” Because the adequacy of this decision is the central issue on appeal, we set forth this portion in full:

“Ms. Tinsman did not dispute SJACS’s factual findings or the recommended sanction, for an individual of sound mind. She claimed, however, that her sanction should be reconsidered in light of a recently-diagnosed medical condition, which she maintains was the cause of her conduct. She raised two issues on appeal, which are discussed below.

**“1. New evidence has become available which is sufficient to alter the decision and which the appellant was not aware of or could not have reasonably obtained at the time of the original hearing.**

“In her appeal, Ms. Tinsman explained that she sought medical treatment in January 2015, after SJACS closed its investigation and issued the sanction of expulsion. After evaluations and an MRI, she received a diagnosis of Bipolar Disorder with Psychotic features.

“In her appeal, Ms. Tinsman claimed that her conduct in May-July of 2014 was caused by her illness. Her appeal contained several supporting documents, each of which was considered by the [Panel] as follows:

*“a. Attachment A: Letter from Dr. Kristin Cadenhead*

“The [Panel] does not consider the physician’s letter sufficient to overcome the preponderance of the evidence. The Panel does not dispute the diagnosis reached by Ms. Tinsman’s physician, as of February 2015. The Panel notes, however, that the physician is unable to verify that Ms. Tinsman was suffering from this illness during May-July 2014, or that the illness directly caused Ms. Tinsman’s conduct during that time. Rather, the physician’s letter largely re-iterates the information Ms. Tinsman provided to her physician about her symptoms and when those symptoms began.

“The [Panel] also remains unclear as to why Ms. Tinsman only sought medical assistance and received a diagnosis after she received her expulsion notice from USC, despite her assertion that she has been hearing voices and having suicidal thoughts as early as March 2014.

*“b. Attachment B. Information about Bipolar Disorder*

“The [Panel] does not consider this information about bipolar disorder from the American Psychological Association sufficient to overcome the preponderance of the evidence. The article contains general information, and does not verify Ms. Tinsman’s condition, or the cause of her conduct from May-July 2014.

*“c. Attachment C. Information about Bipolar Disorder*

“The [Panel] does not consider the information about bipolar disorder from the National Institutes of Health sufficient to overcome the preponderance of the evidence. The article contains general information, and does not verify Ms. Tinsman’s condition, or the cause of her conduct from May-July 2014.

“Furthermore, while the [Panel] understands that Bipolar Disorder manifests itself differently across patients, the Panel notes that the symptoms listed on pages 2-3 of the article are not consistent with the conduct of Ms. Tinsman during May-July 2014, which included several deliberate, intentional, planned acts over a period of time.

“d. *Attachment D. Information about Psychosis*

“The [Panel] does not consider the information about psychosis from the National Institutes of Health sufficient to overcome the preponderance of the evidence. The article contains general information, and does not verify Ms. Tinsman’s condition, or the cause of her conduct from May-July 2014.

“Furthermore, while the [Panel] understands that Psychosis manifests itself differently across patients, the Panel notes that the symptoms listed in the article are not consistent with the conduct of Ms. Tinsman during May-July 2014, which included several deliberate, intentional, planned acts over a period of time.

“e. *Attachment E. Information about Bipolar Disorder*

“The [Panel] does not consider this information about bipolar disorder from the Mayo Clinic sufficient to overcome the preponderance of the evidence. The article contains general information, and does not verify Ms. Tinsman’s condition, or the cause of her conduct from May-July 2014.

“f. *Attachment F. Journal Article*

“The [Panel] does not consider this case study published in Case Reports in Medicine sufficient to overcome the preponderance of the evidence. While the article notes the correlation between arachnoid cysts in the left temporal lobe and

acute onset of psychosis in a single patient, it does not prove a causal relationship. Rather, the authors acknowledge, ‘the association between arachnoid cysts and psychiatric illness remains controversial’, and, ‘further studies are warranted to provide evidence and confirmation of this relationship.’

*“g. Attachment G. Overview of Treatments for Bipolar Disorder*

“The [Panel] does not consider this information about bipolar disorder from psychcentral.com sufficient to overcome the preponderance of the evidence. The article contains general information, and does not verify Ms. Tinsman’s condition, or the cause of her conduct from May-July 2014.

*“h. Attachment H. MRI Results*

“The [Panel] does not dispute the finding of an arachnoid cyst in the MRI ordered by Ms. Tinsman’s physician. The Panel notes, however, that the MRI was performed in January 2015, and does not verify that this cyst existed in Ms. Tinsman’s brain during May-July 2014, or that the cyst directly caused Ms. Tinsman’s conduct during that time.

**“2. The sanction imposed is excessive or inappropriate in relation to the findings.**

“In her appeal, Ms. Tinsman asked for a reconsideration of the sanction of expulsion in light of her medical diagnosis. The [Panel] does not dispute Ms. Tinsman’s current diagnosis, however, it has not been provided with evidence sufficient to prove, by a preponderance, that Ms. Tinsman suffered from this illness from May-July 2014, or that her conduct during such time was caused by this illness.

“The [Panel] notes that sanctions are based on the gravity of the student’s actions, and are designed to hold students

accountable for their actions. Because the functions of a university depend on honesty and integrity among its members, the university expects from its students a higher standard of conduct than the minimum required to avoid disciplinary action. [Footnotes omitted.]

“Here, Ms. Tinsman’s actions included: lying to a fellow student to obtain access to her computer, accessing the student’s work, copying that work and misrepresenting it as her own, hacking into the student’s email account, submitting a false admission on behalf of that student, repeatedly lying to University authorities during the course of the investigation, and causing harm to a fellow student.

“The [Panel] believes these factors of criminal harm preclude any sanction lesser than expulsion. For all the above-stated reasons, even though Ms. Tinsman’s mental illness evidence was new and credible, the [Panel] has reconsidered the evidence pursuant to the court’s order and statement of decision, and concludes that expulsion is the appropriate sanction.”

#### *6. USC’s Return and Court’s Ruling Discharging Writ of Mandamus*

On April 14, 2017, USC lodged its return to the writ of administrative mandamus and proposed order discharging the writ, attaching the Panel’s April 10, 2017 decision. On April 26, 2017, Tinsman filed an objection to USC’s return on the grounds that “on remand USC has failed to comply with their own Policy and the court’s order entered herein on January 19, 2017.” Tinsman requested the court set a status conference and order to show cause hearing for USC’s alleged failure to comply. However, on that same date, April 26, 2017, the court issued an

order discharging the writ of administrative mandamus, finding that “[t]he [Panel] has reconsidered its decision consistent with the court’s order.”

Tinsman timely appealed from the order discharging the writ.<sup>4</sup>

## DISCUSSION

Tinsman contends that the trial court incorrectly found that USC had complied with the writ remanding the matter to the Panel for reconsideration of her appeal of the decision to expel her. She argues that the trial court “obviously intended for USC to reconsider its decision based on the reliable evidence [Tinsman] presented that she was suffering from a mental illness during the time of the misconduct, and the mental illness directly compelled her to commit the misconduct.” She thus contends that the Panel’s analysis on reconsideration—that Tinsman’s new evidence did not prove that she suffered from a mental illness at the time of her misconduct or prove that there was a verifiable link between the illness and her conduct—was “contrary to the trial court’s judgment.” However, Tinsman misconstrues the limited scope of the trial court’s order remanding the case to the Panel for reconsideration. Further, we do not find any abuse of discretion in the Panel’s reconsideration of Tinsman’s appeal. We

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<sup>4</sup> “The order following the hearing into the adequacy of [USC’s] return on the writ is appealable as an order enforcing the judgment.” (*Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1355 (*Los Angeles Internat. Charter*).)

conclude the trial court did not err in finding USC complied with the writ, and thus it properly discharged the writ.

*A. Standard of Review on Order Discharging Writ*

“On appeal from an order discharging a writ, the issue is whether the trial court erred in ruling that the respondent . . . complied with the writ. Thus, our focus is on [USC’s] response to the writ and the trial court’s assessment of that response. [Citation.] [Fn. omitted.] ‘[W]e will uphold [USC’s] decision unless it is devoid of evidentiary support.’ [Citation.] [W]e must determine whether the action taken by [USC] pursuant to the writ was ‘so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law.’” (*Los Angeles Internat. Charter, supra*, 209 Cal.App.4th at pp. 1355-1356.)

*B. Scope of Trial Court’s Initial Order Requiring Panel to Reconsider Tinsman’s Appeal*

To determine whether USC complied with the writ, we first must address what exactly the trial court ordered it to do.

The trial court reviewed the Panel’s findings via administrative mandamus pursuant to Code of Civil Procedure section 1094.5 (section 1094.5), which remedy “is available to review adjudicatory decisions of private organizations, including universities.” (*Doe v. University of Southern California* (2018) 28 Cal.App.5th 26, 31, fn. 9.) “The inquiry in such a case . . . extend[s] to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is

not supported by the findings, or the findings are not supported by the evidence.”<sup>5</sup> (§ 1094.5, subd. (b).) Further, “implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see *Glendale Memorial Hospital & Health Center v. State Dept. of Mental Health* (2001) 91 Cal.App.4th 129, 140.)

Section 1094.5 expressly limits the remedies a court may order when reviewing an administrative decision: the court can deny the writ, or it can grant it and set aside the decision. When a trial court directs that an agency decision be set aside, “it may order the reconsideration of the case in light of the court’s opinion and judgment . . . but the judgment shall not limit or control in any way the discretion legally vested in the [agency].” (§ 1094.5, subd. (f); see *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 933; see *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 531.)

“An administrative agency has very broad discretion in determining the proper discipline or penalty to be imposed. Judicial review of such determinations is very limited.”

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<sup>5</sup> Because Tinsman’s appeal does not involve fundamental vested rights, the trial court correctly found that it could find an abuse of discretion based on insufficient evidentiary support only if it concluded the Panel’s findings were “not supported by substantial evidence in the light of the whole record.” (§ 1094.5, subd. (c); see *Doe v. University of Southern California, supra*, 28 Cal.App.5th at p. 34.)



(*Kirkpatrick v. Civil Service Com.* (1981) 116 Cal.App.3d 930, 933.) Neither a trial court nor an appellate court may substitute its discretion for that of an agency regarding the propriety of a particular sanction. (*Hanna v. Dental Bd. of California* (2012) 212 Cal.App.4th 759, 764.) “This rule is based on the rationale that “the courts should pay great deference to the expertise of the administrative agency in determining the appropriate penalty to be imposed.”” (*Ibid.*) “It is for the agency to weigh the preponderance of conflicting evidence.” (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 419-420.)

In its initial ruling, the trial court found that the Panel “appears to not have considered the possibility that the presence of mental illness contributed to, or caused [Tinsman]’s misconduct,” and does not appear to have considered whether, given the new evidence of Tinsman’s mental illness, the sanction of expulsion was appropriate. In particular, “the Panel’s decision failed to explain why it ignored the evidence of [Tinsman]’s mental condition or why the new evidence was insufficient; it did not explain why the evidence of [Tinsman]’s mental condition was not persuasive or credible, why it was not exonerating or mitigating, and/or why other factors outweighed [Tinsman]’s mental condition.” Because the Panel’s decision failed to adequately demonstrate that it had considered the new evidence of mental illness, the trial court remanded the matter for the Panel “to reconsider its decision consistent with this order.”

Tinsman characterizes the trial court’s decision as expressing the court’s “opinion” that “reliable evidence demonstrated that [Tinsman] suffered from a mental illness at the time the misconduct occurred.” She asserts that the Panel “disregarded” and “contradict[ed]” the trial court’s judgment in

this respect. However, as discussed further below, the trial court made no findings of fact or law regarding the substance of Tinsman's appeal that were binding on USC on remand.

Tinsman chiefly relies on the trial court's description of Tinsman's appeal stating as follows: "One of the grounds for the appeal was that her recently diagnosed medical condition (arguably a legally cognizable disability) constituted new evidence that had just become available; this new evidence was relevant because it showed that a few months before the write-on competition, [Tinsman] began suffering from a mental illness and this evidence was sufficient, reasonably, to alter the Administrative Reviewer[']s decision." However, the court's summary of Tinsman's grounds for her appeal cannot reasonably be viewed as a finding adopted by the court.

Tinsman further relies on the trial court's statement that the Panel's decision "suggests that the Panel did not understand that this new evidence was reasonably sufficient to alter the sanction that had been imposed" on Tinsman. Tinsman argues that the court thus found that the evidence of Tinsman's mental illness was reliable and should have led to a lighter sanction. However, we interpret this passage as merely conveying that the evidence Tinsman had provided regarding her newly-diagnosed mental illness was *sufficient to warrant the Panel's examination* of whether a different, less severe sanction should be imposed. This interpretation is consistent with the trial court's ensuing statements faulting the Panel for "fail[ing] to explain why" it apparently had concluded the new evidence of Tillman's mental illness was "insufficient[,] . . . not persuasive or credible, . . . [or] not exonerating or mitigating." The trial court did not find that the Panel had reached the wrong decision by upholding the

sanction of expulsion despite the new evidence, but rather found that it had not explained how or why it reached that decision.

Our more narrow interpretation of the trial court's order is in line with the limitations on the court's authority in reviewing Tinsman's appeal via administrative mandamus. As discussed above, although the court lawfully could set aside USC's decision, it could not compel USC to exercise its discretion in a particular way on the issue of the appropriate sanction for Tinsman. (*Hanna v. Dental Bd. of California, supra*, 212 Cal.App.4th at p. 764.)

*C. The Trial Court Did Not Err in Discharging the Writ*

We now examine USC's compliance with the writ. "[A]ny agency reconsideration must fully comport with due process, and may not simply allow the agency to rubber stamp its prior unsupported decision." (*Voices of the Wetlands v. State Water Resources Control Bd., supra*, 52 Cal.4th at p. 528.) Detailed findings are not necessarily required, but USC's decision "should be thorough enough, and factual enough, to permit effective review by the courts." (*Los Angeles Internat. Charter, supra*, 209 Cal.App.4th at p. 1355.) As Tinsman concedes, we may reverse the trial court's order discharging the writ only if the action taken by USC pursuant to the writ was "so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law." (*Id.* at pp. 1355-1356.)

Under USC's disciplinary procedures, an appeal to the Panel is well-taken in three situations: (1) "new evidence has become available which is sufficient to alter the decision"; (2) "the sanction imposed is excessive, insufficient or inappropriate"; or (3) "the review panel or review officer failed to follow university

rules or regulations while reviewing the cited behavior.” Under USC’s policy, “[t]he appellate panel applies a preponderance of the evidence standard.” Tinsman’s appeal raised the first two bases.

At the outset, we reject Tinsman’s suggestion that USC was obligated to *disprove* that Tinsman was suffering from a mental disorder at the time she engaged in plagiarism and fraud. Tinsman was the party seeking to alter SJACS’s disciplinary decision based on supposed new evidence of a mental condition. USC did not bear the burden of demonstrating that Tinsman did *not* suffer from bipolar disorder during the period in which she engaged in academic misconduct.

In her opening brief, Tinsman contends in a general fashion that the Panel failed to reasonably consider her new evidence showing that she was suffering from a mental illness in mid-2014 which caused her to experience paranoia, hallucinations, and delusions that in turn led her to engage in the academic misconduct. However, the Panel’s lengthy decision included its reasoned analysis as to each piece of new evidence submitted by Tinsman in support of her appeal.<sup>6</sup>

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<sup>6</sup> In her reply brief, Tinsman faults the Panel for not specifically taking into account on reconsideration what she characterizes as her “personal statement.” We need not consider arguments raised for the first time in a reply brief. (*Padron v. Watchtower Bible & Tract Society of New York, Inc.* (2017) 16 Cal.App.5th 1246, 1266-1267 (*Padron*).) In any event, the Panel did adequately summarize and consider Tinsman’s “personal statement”: the Panel noted that Tinsman explained that she sought medical treatment in January 2015 after SJACS had issued its sanction of expulsion; it stated that she received a diagnosis of bipolar disorder with psychotic features; and it

*1. Background materials on bipolar disorder and psychosis*

The Panel considered the background materials provided by Tinsman describing the nature and symptoms of bipolar disorder and psychosis. It correctly determined that these materials did not provide any information specific to Tinsman. The Panel also concluded that, while bipolar disorder and psychosis may manifest themselves differently depending on the patient, the symptoms of those disorders listed in the materials were “not consistent with the conduct of Ms. Tinsman during May-July 2014, which included several deliberate, intentional, planned acts over a period of time.”

We find no abuse of discretion in the Panel’s conclusions drawn from a comparison of Tinsman’s behavior during the period in question with the reported symptoms of bipolar disorder and psychosis. Taking bipolar disorder and psychosis together, the more severe possible symptoms that are described include having racing thoughts; having an unrealistic belief in one’s abilities; behaving impulsively and engaging in pleasurable, risk-taking behaviors; having hallucinations or delusions; having changes in thinking patterns, such as having difficult concentrating and disconnected thoughts; and very disorganized behavior. The Panel reasonably concluded that the listed symptoms did not seem to mesh with the behaviors exhibited by Ms. Tinsman in 2014. Although Tinsman now characterizes her conduct as “desperate, sloppy attempts” that “fooled no one,” Tinsman’s methodical steps to cover her tracks did not

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repeated that she believed her misconduct in 2014 was caused by her illness.

demonstrate disorganized thoughts or behavior. The Panel reasonably assessed that Tinsman's acts of deception and cover-up, perpetrated on her fellow student and the law school administration over more than four months, were calculated and sophisticated, even if ultimately they were doomed to fail.

## *2. Letter from psychiatrist*

As to the letter from Tinsman's psychiatrist, Dr. Cadenhead, the Panel accepted her diagnosis of Tinsman as of February 2015. However, the Panel found that Dr. Cadenhead's letter was not "sufficient to overcome the preponderance of the evidence"<sup>7</sup> because Dr. Cadenhead was "unable to verify that Ms. Tinsman was suffering from this illness during May-July 2014, or that the illness directly caused Ms. Tinsman's conduct during that time. Rather, the physician's letter largely re-iterates the information Ms. Tinsman provided to her physician about her symptoms and when those symptoms began."

In her reply brief, Tinsman focuses specifically on Dr. Cadenhead's letter for the first time. She contends that

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<sup>7</sup> Tinsman takes issue with the fact that the Panel found that the new evidence she submitted was not "sufficient to overcome the preponderance of the evidence." She suggests that, by applying this preponderance standard, the Panel contravened the trial court's instructions not to consider whether Tinsman should be found "guilty" or "innocent," but instead to consider whether the sanction of expulsion was too severe. However, it appears the Panel was merely following USC's appellate procedures, which required it to apply the preponderance standard in determining if the new evidence was "sufficient to alter the decision" reached by SJACS.

Dr. Cadenhead's letter provided overwhelming evidence that Tinsman was suffering significant untreated mental health issues throughout 2014, and the Panel abused its discretion by failing to accept Dr. Cadenhead's opinion that Tinsman's misconduct should be attributed to her bipolar disorder. Arguments introduced for the first time on appeal are deemed forfeited. (*Padron, supra*, 16 Cal.5th at pp. 1266-1267.) Nonetheless, even if we were to address Tinsman's argument on the merits, we would not conclude that the Panel abused its discretion by failing to accept Dr. Cadenhead's opinion that Tinsman's bipolar disorder was responsible for her academic misconduct.

First, as the Panel stated, Dr. Cadenhead's opinion was largely based on Tinsman's reporting about the symptoms she experienced during the time she engaged in the academic misconduct. Although Tinsman's immediate family members confirmed that she was not herself at that time, all the information from Tinsman and her family members was provided many months after the fact. By then, SJACS had already issued its decision that Tinsman should be expelled. It was not unreasonable for the Panel to assume that Tinsman and her family had a vested interest in providing Dr. Cadenhead with accounts that would support an opinion that might allow Tinsman to be reinstated at USC; thus, the Panel reasonably could have determined that Tinsman's and her close family members' accounts of her behavior may not be entirely credible. Without any corroborating evidence from a medical professional or a more independent source, it was not unreasonable for the Panel to question the foundations or strength of Dr. Cadenhead's opinion.

Further, Dr. Cadenhead's letter is vague about her understanding of Tinsman's behavior and actions that led to her expulsion. She refers to Tinsman having stolen a classmate's work, and then states simply that Tinsman "mishandled the situation" afterwards. From this understated description, it is unclear if Dr. Cadenhead was aware of the full extent of Tinsman's actions after her initial deception, including hacking into Kirnosova's email account, writing a false confession from Kirnosova, apparently inventing a fictitious friend to support her fabricated explanations (including creating a fake email account for this non-existent person), and maintaining calm and steadfast denials of misconduct to her law school dean and the SJACS review officer. Dr. Cadenhead does not explain how Tinsman's unrelenting and sophisticated deception over a four-month period could reasonably be attributed to Tinsman's bipolar disorder, and, as noted above, Tinsman's background materials on bipolar and psychosis do not suggest behavior like Tinsman's is characteristic of either bipolar disorder or psychosis. Given the many questions left unanswered by Dr. Cadenhead's letter, it was not an abuse of discretion for the Panel to decline to accept her broad opinion that Tinsman's "erratic and bizarre behavior over the last few years was secondary to an emerging mental disorder."

*3. MRI results showing cyst on her brain and Case Study suggesting cysts may cause psychosis*

The Panel also considered Tinsman's evidence that a January 2015 MRI revealed an arachnoid cyst pressing on her brain, as well as a Case Study noting a possible correlation between arachnoid cysts and the acute onset of psychosis. The



Panel concluded that the MRI did not verify that the cyst was present during May-July 2014, or prove that it was the root cause of her misconduct during that time. Similarly, the Panel found the case study does not prove a causal relationship between Tinsman's cyst and her psychosis or misconduct. The Panel's conclusions regarding the speculative nature of this evidence were reasonable.

*4. The Panel adequately reconsidered the appropriate sanction*

The Panel explained that its policy was to impose sanctions on students that corresponded to the severity of their actions, and that would hold students accountable for their actions. "Here," the Panel found, "Ms. Tinsman's actions included: lying to a fellow student to obtain access to her computer, accessing the student's work, copying that work and misrepresenting it as her own, hacking into the student's email account, submitting a false admission on behalf of that student, repeatedly lying to University authorities during the course of the investigation, and causing harm to a fellow student." The Panel concluded no sanction lesser than expulsion could adequately redress these actions that included criminal acts. The Panel thus concluded that "[f]or all the above-stated reasons, even though Ms. Tinsman's mental illness evidence was new and credible, the [Panel] has reconsidered the evidence pursuant to the court's order and statement of decision, and concludes that expulsion is the appropriate sanction."

““One of the tests suggested for determining whether the administrative body acted within the area of its discretion is whether reasonable minds may differ as to the propriety of the

penalty imposed. The fact that reasonable minds may differ will fortify the conclusion that there was no abuse of discretion.”” (Hanna v. Dental Bd. of California, *supra*, 212 Cal.App.4th at p. 764.) The Panel adequately set forth its reasoning on all of Tinsman’s evidence purporting to demonstrate a causal link between her mental disorder and her misconduct. Its determination that expulsion remained the only sufficient sanction, given the severity of Tinsman’s dishonesty and misconduct, was reasonable. We conclude the trial court did not err in concluding that USC had complied with the writ.

### **DISPOSITION**

The order discharging the writ is affirmed. Respondents are to recover their costs on appeal.

STONE, J.\*

We concur:

ZELON, Acting, P. J.

FEUER, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.